

III. REMARKS

1. Claims 1, 2 and 5 are amended.

2. A telephonic interview was held between William Knotts of Perman & Green, LLP, Examiner Victoria W. Chen and Michael Peffley on January 28, 2010. During the interview the 35 USC 112 rejection and the anticipation rejection under 35 USC 102(e) were discussed.

With respect to the 112 rejection it was expressed to the Examiner that all the specification had to do was to convey to one skilled in the art that the Applicant had invented what is being claimed. Applicant explained to the Examiner that Figs. 5, 5a and 5b illustrate the first lever member (76) and the second lever member (78) being operably connected to the members (22). The members (22) would clearly be understood by one skilled in the art as jaws of the device. Because first and second lever members (76, 78) are "commonly" connected to the members (22) the members (22) are a "common closable jaw" as recited in the claim. It was concluded that the 35 USC 112 rejection should be withdrawn.

With respect to the anticipation rejection over Bacher, an agreement was reached where if Applicant amended the claims to include some kind of interconnectivity between the first and second lever members (so movement of one causes movement of the other) Bacher would no longer apply.

3. Claims 1 and 4 are patentable under 35 USC 102(e) over Bacher (US 6299625). Claim 1 recites an interengagement construction between the first lever member and the second lever member such that movement of one of the first or second lever

members causes movement of the other one of the first or second lever member such that the first and second lever members move in a coordinated manner between the first and second positions. This feature is not expressly or inherently disclosed in Bacher.

It is noted that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) and that "[t]he identical invention must be shown in as complete detail as is contained in the ... claim," *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).


Bacher discloses a first jaw part (14) and a second jaw part (16) are movable independently of one another (Col. 7, L. 54-56). The handle (10) of the device in Bacher includes a first movable handle element (30) and a second movable handle element (32) arranged distally from thumb handle element (34) (Col. 8, L. 16-18). The first movable handle element (30) serves to actuate the opening and closing of the first jaw part (14) while the second movable handle element (32) serves to actuate the opening and closing of the second jaw part (16). The first and second handle elements (30, 32) in Bacher are mounted to the handle body (28) so as to move independently of one another. (Col. 8, L. 36-42). Thus, Bacher cannot disclose or suggest what is claimed in Applicant's claim 1 because each of the handle elements (30, 32) in Bacher are independently movable such that each of the jaw parts (14, 16) are independently operable.

Bacher simply does not expressly or inherently disclose an interengagement construction between the first lever member and the second lever member such that movement of one of the first or second lever members causes movement of the other one of the first or second lever member such that the first and second lever members move in a coordinated manner between the first and second positions. Bacher expressly discloses independent operation of separate and distinct handle elements (30, 32) for separate and distinct operation of a respective one of the first and second jaw parts (14, 16) and nothing more. Therefore, claim 1 is patentable over Bacher. Claim 4 is patentable at least by reason of its dependency.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,



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Date

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